This is an appeal, primarily to see what they're hiding with their redactions. They *claim* they can't process the appeal for 2 years because of backlogging. Even if that's true, the importance of the Freedom of Information Act, demands that they should be staffed to meet that importance, for transparency in this supposed democracy.

Gmail

Jake Todd <jake.todd@gmail.com>

FDA Freedom of Information Act Appeal

1 message

Jake Todd <jake.todd@gmail.com> Thu, Mar 22, 2018 at 2:14 AM
To: FOIARequest@psc.hhs.gov

This is an Official Appeal to the Final Response of FDA FOIA #2018-327

The redaction involving Karl Thrash's email to Matthew Holman and Janelle Barth, inappropriately designated as (b)(5), is completely invalid. Also, the inappropriately designated (b)(5) email, from Matthew Holman, to Colleen Rogers and Matthew Walters, is also invalid. These redactions do not involve any of the 9 exemptions, and may contain incriminating information, which cannot be withheld from this action (see below). The (b)(6) redaction is fine, as it concerns a private cell phone number. I received the Official USDA FOIA Response (2018-REE-02806-F), which helps fill-in the multi-page redaction of the Final Response to FDA FOIA #2018-327.

The following gives the necessary context and gravity of this Official Appeal.

I finally got so frustrated with Christopher Bentley's (USDA) lies and stonewalling, that I wrote him an appropriate, and accusatory email. He responded rudely. Clearly, from my own multi-agency FOIA emails, which are involved here, and from the dates and times on those emails, Christopher Bentley then emailed his angst to Matthew Holman. Then, a few minutes later, Matthew Holman sent an email to Karl Thrash, with those details. That email was entitled "FW: From ARS," which was forwarded by Matthew Holman, from Christopher Bentley's Agricultural Research Service (ARS), to Karl Thrash. Karl Thrash is a Security Administrator. I doubt he knows the first thing about radioactivity in tobacco, which was the entire scope of the communications between myself and Matthew Holman. But I bet Thrash can sure block someone's communications with the FDA's tech infrastructure! After receiving the aforementioned email from Holman, Thrash went ahead and blocked me from communicating with the entire FDA. Why else would a Security Administrator be brought into this by Holman? I cannot make nor receive phone calls, nor emails, with the entire FDA staff, *including FOIA personnel*. This is illegal in a multitude of ways, and may bring consequences. It is clear Matthew Holman had Karl Thrash cut me off, and that shouldn't be redacted. Also, around the date of these emails, I accused Matthew Holman of breaking the law due to his inaction, stonewalling, and doublethink, which endangers tens of thousands of American tobacco smokers getting lung cancer, per year, compared with the USDA Organic option in cigarettes. I wouldn't be surprised if that also influenced the blocking of me from communicating with the FDA. All this evidence needs to be released.

It is illegal to withhold incriminating information under the FOIA, especially after Former President Barack Obama signed the relevant bill in June 2016. Be advised that legal action may be taken, if a) the invalid redactions are not released, and b) the entire communication chains, including deleted and drafted emails/records, between Matthew Holman and Karl Thrash, relating to me (Jake Todd), are not released to me promptly, and in full, by email *and* postal mail.

Please confirm receipt of this Official Appeal, and provide a date estimate of its completion. Send the receipt confirmation and date completion estimate, by email *and* postal mail to me, (just in case email is also cut off between myself and the HHS FOIA personnel).

Sincerely,

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Division of FOIA Services
Office of the Secretary
Assistant Secretary for Public Affairs
Washington, D.C. 20201

March 22, 2018

Appeal Case No. 18-0049-AA

Mr. Jake Todd
427 Glendale Road
Bellevue, ID 83313

Dear Mr. Todd:

This acknowledges receipt of your Freedom of Information Act (FOIA) appeal received by this office on the date above. Your appeal has been assigned the above-stated case number based on when it was received in this office. Please reference this number on your correspondence.

Your letter is summarized below:

Appealing the Food and Drug Administration's (FDA) redactions under FOIA exemption b5 in FOIA case 2018-327.

Pursuant to 45 CFR 5.35 (c) your appeal falls under "unusual circumstances" in that our office will need to consult with another office or agency that has substantial interest in the determination of the appeal. The actual processing time will depend on the complexity of the issues presented in the appeal and consultation with other U.S. Department of Health and Human Services (HHS) components involved. For more information about how your appeal will be processed please see 45 CFR 5.34 http://www.hhs.gov/foia/45cfr5.html

The FOIA and the HHS FOIA regulations are available at the following web addresses: http://www.justice.gov/oip/doj-foia-regulations and http://www.hhs.gov/foia/45cfr5.html.

Any questions regarding the status of your appeal should be directed to this office by calling (202) 260-6933, or write to us at the address above.

Sincerely,

Glenn Voelker
PHS FOIA

Notice the circled time. Then on the next page, notice that circled time. 3 minutes and they released the hounds.

From: Bentley, Christopher - ARS
To: Jake Todd
Cc: Holman, Matthew R
Subject: RE: From ARS
Date: Thursday, November 9, 2017 12:47:00 PM

Getting back to you, Jake. I take back my earlier comment. Can't abide blasphemy. Our discussion is no longer professional. Bridge officially burned. r/Chris

Christopher S. Bentley
Director, Office of Communications
Agricultural Research Service, USDA
301-504-1636 (w); 240-454-2977 (c)
christopher.bentley@ars.usda.gov

From: Jake Todd [mailto:jake.todd@gmail.com]
Sent: Thursday, November 09, 2017 12:26 PM
To: Bentley, Christopher - ARS <Christopher.Bentley@ARS.USDA.GOV>
Cc: Holman, Matthew R <Matthew.Holman@fda.hhs.gov>
Subject: Re: From ARS

Well sure Chris, Matt Holman holds the keys to doing right on the issue more than any other American. But I'm not talking about Matt Holman; I'm talking about You and the USDA, and its perfect position to get the word out that it certifies some tobacco as USDA Organic, **and therefore is less dangerous!** Chris, it's double-think to certify tobacco as USDA Organic, and then for the USDA to divorce itself **from the good it has just done**, in terms of making tobacco safer! Chris, do the God-Damn right thing! Don't be mad at me for saying that. Instead, understand what we both know, which is about 38 Thousand cases of lung cancer, in Americans, could be prevented, every single year, if tobacco were to be made USDA Organic! And you can start small. You could put info on the USDA website. You could talk with other organizations (especially the FDA) ...and speaking of the FDA, if Matt Holman really is the man to talk with about this, then why don't **YOU** have the balls to talk to him, yourself!? You could also make a press release. There are a million ways YOU and your organization can save LIVES! .....Forgive my frustration, but I think it's appropriate.

Get back to me Chris..... I feel down deep you're a good man -Jake

On Thursday, Nov 9, 2017 at 8:56 AM, Bentley, Christopher - ARS <Christopher.Bentley@ars.usda.gov> wrote:
Jake,

Rest assured, you're not burning a bridge. Corresponding with Dr. Holman is simply the right avenue to pursue. His office handles inquiries like this for the federal government. For lack of a better way to explain it, his office has jurisdiction. r/Chris

Christopher S. Bentley
Director, Office of Communications
Agricultural Research Service, USDA

Here it is. Matthew Holman asking Karl Thrash, to do something about it. He blocked communication with the entire 15,000 employees of the FDA. Notice the redaction of that.

From: Thrash, Karl
To: Holman, Matthew R; Barth, Janelle
Subject: RE: From ARS
Date: Monday, November 13, 2017 7:14:28 AM

Thanks for forwarding this to our office. We will (b)(5) Deliberative Process Privilege [redacted]

Karl Thrash
Cell (b)(6) [redacted]
Karl.Thrash@FDA.HHS.GOV

From: Holman, Matthew R
Sent: Thursday, November 09, 2017 12:50 PM
To: Barth, Janelle <Janelle.Barth@fda.hhs.gov>; Thrash, Karl <Karl.Thrash@fda.hhs.gov>
Subject: FW: From ARS

FYI- USDA response to Jake Todd.

Matt

Matthew R. Holman, Ph.D.
Director, Office of Science
Center for Tobacco Products, FDA

Referred to USDA-REE for processing and direct response to requester

[redacted]

Here's the FOIA response, before the appeal. As you can see from this page, and the page above, the main redaction is b(5), which they use to hide the information (redaction), under the guise of exemption from civil discovery (like in a lawsuit). Why redact when you have nothing to hide?

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Center for Tobacco Products
Document Control Center
Building 71, Room G335
10903 New Hampshire Avenue
Silver Spring, MD 20993-0002

February 28, 2018

Sent via Email
Jake Todd
427 Glendale Road
Bellevue, ID 83313
jake.todd@gmail.com

Re: FOIA Request 2018-327 - Final Response

Dear Mr. Todd:

This is the final response to your attached three (3) Freedom of Information Act (FOIA) requests to the U.S. Food and Drug Administration (FDA), Center for Tobacco Products (CTP).

During a telephone call on January 30, 2018, you agreed to aggregate and refine the scope of your FOIA requests to, "all email records sent to or from matthew.holman@fda.hhs.gov involving any other email addresses, which contain my name in the sent to, received from, or body-section, of those emails." You also provided the following search criteria to aid CTP in the search for responsive records: "Jake," "Jake Todd," "Mr. Todd," "Mr. Todd," and "jake.todd@gmail.com." The timeframe for the scope of our search was January 1, 2017 through January 7, 2018.

Your request has been processed under the FOIA, 5 U.S.C. § 552.

A search for responsive records was conducted in CTP's Office of Science (OS). The search of OS produced a total of twenty-four (24) pages of records. After review, CTP FOIA has determined to release fourteen (14) pages in their entirety. Portions of two (2) pages have been withheld pursuant to FOIA Exemptions (b)(5) and (b)(6) as described below.

FOIA Exemption (b)(5) protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

Deliberative Process Privilege - protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within interagency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The information withheld includes recommendations and possible proposed actions.

Exemption (b)(6) protects from disclosure information regarding individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy" and where such privacy interests outweigh any public interest which would be advanced by the disclosure of their personal information. The information withheld includes mobile telephone numbers.

Additionally, portions of the responsive records originated within, or contain equities related to, the U.S. Department of Agriculture (USDA), Research Education and Economics (REE). Therefore, CTP FOIA is referring those pages to the FOIA Officer for USDA-REE for processing and direct response to you. In the event you have questions regarding this referral, please contact the FOIA Officer for USDA-REE using the contact information below:

Stasia Hutchison
FOIA Officer
Research, Education and Economics (REE)
U.S. Department of Agriculture
5601 Sunnyside Ave., Stop 5128
Beltsville, MD 20705-5128
Tel. 301-504-1655
Fax 301-504-1647
Email: reefoia@ars.usda.gov

You have the right to appeal this determination. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. Your appeal must be mailed within 90 days from the date of this response, to: Agency Chief FOIA Officer, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Public Affairs, Room 729H, 200 Independence Avenue, S.W., Washington, DC 20201; e-mail FOIARequest@PSC.hhs.gov. Please clearly mark both the envelope and your letter or e-mail "**FDA Freedom of Information Act Appeal.**"

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, please contact Marqui Barnes at 240-402-2453 or via email at CTPFOIA@fda.hhs.gov. You may also contact the FDA FOIA Public Liaison for assistance at: Division of Freedom of Information, Office of the Executive Secretariat, US Food & Drug Administration, 5630 Fishers Lane, Room 1050, Rockville, MD 20857, E-mail: FDAFOIA@fda.hhs.gov.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road–OGIS, College Park, MD 20740-6001; Telephone 202-741-5770; Toll free 1-877-684-6448; facsimile 202-741-5769; and E-mail ogis@nara.gov.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the $25 minimum, there is no charge. 21 C.F.R. § 20.45(b)(4)

Thank you for the opportunity to assist you!

Sincerely,

April Brubach -S

Digitally signed by April Brubach -S
DN: c=US, o=U.S. Government, ou=HHS, ou=FDA, ou=People, cn=April Brubach -S, 0.9.2342.19200300.100.1.1=0011520970
Date: 2018.02.28 10:15:45 -05'00'

April Brubach
Deputy Director
Office of Health Communication and Education
Center for Tobacco Products
U.S. Food and Drug Administration

Enclosure(s)

Holman, Matthew R <Matthew.Holman@fda.hhs.gov> Fri, Oct 20, 2017 at 5:54 AM
To: Jake Todd <jake.todd@gmail.com>
Cc: "Bentley, Christopher - ARS" <Christopher.Bentley@ars.usda.gov>

Yes, I received your previous email. I shared it with my staff so that they can consider it alongside other research that we are looking at in deciding our regulatory actions. Thanks for sharing.

Matt

Matthew R. Holman, Ph.D.

Director, Office of Science

Center for Tobacco Products, FDA

Jake Todd <jake.todd@gmail.com> Sun, Oct 22, 2017 at 12:07 PM
To: "Holman, Matthew R" <Matthew.Holman@fda.hhs.gov>

Hi Matt,

Thanks for getting back to me so quickly, and for sharing this matter with your staff. I do have some questions though. I'd really appreciate you getting back to me regarding them, when it's convenient for you...

First, can you put me in contact with your researchers, or something that would keep me in the loop somehow, as this develops (maybe you could keep me posted)?

Also, do you guys have any existing plans or considerations, towards radioactivity in tobacco, as something to influence policy and/or awareness?

Lastly, please remember from my last email, that continuing the existing effort against smoking, in conjunction with attention regarding radioactivity in tobacco, would together save tens of thousands of more lives every year, than just the existing approach alone.

Have a good one, and I look forward to hearing back from you.

Cheers,

Jake

He's slippery. If you really read this carefully, it boils down to "We have to be transparent, therefore we can't tell you anything." What the policy should be is to simply be transparent. Truth. It's pretty simple.

Holman, Matthew R <Matthew.Holman@fda.hhs.gov> Tue, Oct 24, 2017 at 5:47 AM
To: Jake Todd <jake.todd@gmail.com>

I appreciate you sharing your thoughts and your research with us. However, because we are a regulatory organization and have many stakeholders, we do not maintain ongoing closed door discussions with individuals or organizations as it relates to potential regulatory actions. We must maintain the integrity of our regulatory process by being transparent and engaging with all stakeholders equally. Therefore, when we receive information such as that which you shared with me, my staff evaluates the information and data and, as appropriate, moves forward with a broader engagement of stakeholders. For example, we may issue a guidance document based on data that we become aware of so that all of the public knows our recommendations on a given issue(s) and has the opportunity to provide comment on our recommendations. If we take action related to radioactive material, we will inform you so that you have the opportunity to engage with us on the issue alongside other stakeholders.

_____ Matt

Matthew R. Holman, Ph.D.

Director, Office of Science

Center for Tobacco Products, FDA

Begging him to be transparent.

Jake Todd <jake.todd@gmail.com> Wed, Oct 25, 2017 at 1:17 PM
To: "Holman, Matthew R" <Matthew.Holman@fda.hhs.gov>

Point taken, Matt. Just one question: Can you give me some idea of the likelihood that you guys will pursue the tobacco radioactivity issue in any shape or form? I mean, should I hold out any hope for this?

Jake

It's pretty simple, as it's laid out here to him: Radioactivity in tobacco is a major factor in lung, and other cancers. That has been established by countless researchers. The NCI has communicated directly what's mentioned here. It's way past time for awareness and legislation for organic tobacco, which would save countless lives.

Jake Todd <jake.todd@gmail.com> Fri, Nov 3, 2017 at 2:01 AM
To: "Holman, Matthew R" <Matthew.Holman@fda.hhs.gov>

Matt, I have it in writing from the NIH's NCI (National Institutes of Health's National Cancer Institute) that: a) radioactivity in cigarettes is a major contributor to lung cancer, and b) not all cigarettes' tobacco is equally radioactive. If that is not a big enough stakeholder to move forward with this, then you tell me who is. I don't want to sound rude, but that is the reality here. Please get back to me and have a good weekend.

Jake

He just repeats himself here, and doesn't even address the point that the NCI, with its multi-billion dollar yearly budget, has conclusive evidence that radioactivity in tobacco is a major cause of cancer.

Holman, Matthew R <Matthew.Holman@fda.hhs.gov> Fri, Nov 3, 2017 at 11:11 AM
To: Jake Todd <jake.todd@gmail.com>

I appreciate your concern about the public health impact caused by tobacco products. As I stated before, we will evaluate the information that you provided and any other relevant information to determine what regulatory action is warranted. We have to honor the integrity of our regulatory process and address this issue through established procedures. Therefore, I cannot share more information with you about whether we will take any actions to address radioactive material in tobacco products or, if we plan to take action, what the action would be. Thanks for your understanding.

Matt

Matthew R. Holman, Ph.D.

Director, Office of Science

Center for Tobacco Products, FDA

Here again, trying in vain to suck up to him, so that something might get done.

Jake Todd <jake.todd@gmail.com> Fri, Nov 3, 2017 at 11:53 PM
To: "Holman, Matthew R" <Matthew.Holman@fda.hhs.gov>
Cc: "Robinson, Bill (NIH/NCI) [E]" <robinsobi@mail.nih.gov>, Tom Harding <tom@lehighvalleyorganicgrowers.com>, "Crosby, Kathleen" <Kathleen.Crosby@fda.hhs.gov>, Mitchell.Zeller@fda.hhs.gov

Ok, I'm with you on that. Now in order for the FDA's regulatory process to be of high integrity, which is your concern (and mine too), please allow me to put you in touch with Bill Robinson of the NIH's NCI. He will confirm that indeed what I've said is true. That is: Tobacco radioactivity is a major contributor to lung cancer, and also that different cigarettes have different radioactivity. Bill has been in contact with his scientists, who confirm this. All I'm doing in this action is to introduce you to another stakeholder, who is very relevant, I would assume, to your regulatory process. I'm putting Bill in the CC of this email. His email address is robinsobi@mail.nih.gov and his phone number is (240) 276-6789. I hope the two of you can make progress on this matter. Keep me in the loop. Tom Harding, who I'm also putting in the CC of this email, is a lifelong advocate of USDA Organic values to Congress etc. there in D.C. He is new to the subject area of radiation in tobacco, but has expressed interest.

Cheers All,

Jake

Thoroughly disgusted, after no response, some legal research was done, and came up with this:

Jake Todd <jake.todd@gmail.com> Tue, Nov 14, 2017 at 1:45 AM
To: "Robinson, Bill (NIH/NCI) [E]" <robinsobi@mail.nih.gov>, "Bentley, Christopher - ARS" <Christopher.Bentley@ars.usda.gov>, "Holman, Matthew R" <Matthew.Holman@fda.hhs.gov>

Referencing my most recent email, the public mission statements of the NCI, USDA and FDA potentially obligate them to act. There's more...

What the 3 of you are doing (rather, not doing), may be, in my opinion, Civil Negligence. If you don't believe me, then see here, from Law.com: http://dictionary.law.com/Default.aspx?selected=1314

It is my opinion that all 3 of you possess the knowledge, clout, and more than ample resources to save tens of thousands of lung cancer cases, per year. You may be failing to act on what you know, "which a reasonable or prudent person would do," to quote Law.com.

The damages you may be committing to smokers, second hand smokers, and their families and friends, in at least 44, if not all 50 U.S. states, may constitute Civil Negligence.

Furthermore, the 3 of you may be in violation of Wrongful Death statutes. See here, again from Law.com: http://dictionary.law.com/Default.aspx?selected=2268

From the American Lung Association: "Between 2005 and 2010, an average of 130,659 Americans (74,300 men and 56,359 women) died of smoking-attributable lung cancer each year." So that may potentially result in a class-action lawsuit, or individually, of 26,131 counts of Wrongful Death, per year. 26,131 is 20% of 130,659. You see, 20% less cases per year of lung cancer may be the consequence of awareness, and legislation requiring tobacco to be USDA Organic, from the research I have sent you, and the countless peer-reviewed papers I've made you aware of.

I want to make it clear that I am not threatening any legal action. I am simply pointing out legal statutes, which you may be in violation of.

Sincerely,

Jake